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11 UNITED STATES OF AMERICA
12 BEFORE THE NATIONAL LABOR RELATIONS BOARD
13 REGION 21
14

15 SHARP GROSSMONT HOSPITAL,

Case No. **21-RC-307623**

16 Employer,

**EMPLOYER SHARP
GROSSMONT HOSPITAL'S
OBJECTIONS TO THE CONDUCT
OF THE ELECTION AND
CONDUCT AFFECTING THE
RESULTS OF THE ELECTION**

17 -and-

18 SEIU UNITED HEALTHCARE WORKERS-WEST
(SEIU-UHW)

19 Petitioner.

20 Pursuant to Section 102.69 of the Board's Rules and Regulations, Employer Sharp
21 Grossmont Hospital (the "Hospital") hereby objects to conduct affecting the results of the election
22 and the conduct of the election in the above-captioned case. The Service Employees International
23 Union, United Healthcare Workers-West ("SEIU" or "Petitioner"), through its officers, employees,
24 agents and/or representatives, engaged in the below conduct which effectively denied bargaining
25 unit employees a free and independent choice in the election of February 1-3, 2023. Further, the
26 manner in which the Board Agents conducted the election, as described below, is highly
27 objectionable. Their actions, including their dereliction of their own Casehandling Manual raises
28

1 a reasonable doubt as to the validity of this election, thereby requiring that this election be
2 overturned.

3 **I. OBJECTIONS**

4 1. During the Critical Period, the Petitioner, through its agents, engaged in
5 harassing and unsolicited in-home visits to bargaining unit employees. Petitioner's representatives
6 engaged in coercive behavior, such as entering and trespassing into bargaining unit employee
7 dwellings without permission; returning to bargaining unit employee dwellings multiple times per
8 day for weeks on end; coercing bargaining unit employees to sign unknown documents; blocking
9 bargaining unit employees from entering their cars; and refusing to leave bargaining unit
10 employees' property when requested to do so. This created a sense of fear in the bargaining unit
11 employee population as tales of these actions spread and more and more bargaining unit
12 employees experienced these terrifying in-home visits from SEIU representatives. This carefully
13 cultivated environment of fear coerced countless bargaining unit employees to vote for SEIU or to
14 simply not show up to the polls.

15 2. During the Critical Period and during the election, the Petitioner, through its
16 agents, intimidated and coerced bargaining unit employees by taking pictures of bargaining unit
17 employees despite the employees' protests and requests that their pictures not be taken. Petitioner
18 and its agents further did not provide an adequate explanation for this photography. As the Board
19 has found numerous times under the *Randell Warehouse of Arizona (Randell II)* doctrine, this is a
20 blatant violation of employees' Section 7 rights. This non-consensual and unexplained
21 photography created exactly the kind of fear of reprisals that the Board finds violative of the
22 NLRA. At least (b) bargaining unit employees subsequently discovered that SEIU was using
23 their photographs in a pro-SEIU flier, despite not being given permission to do so. All of these
24 employees were lied to by the SEIU representative who took their picture. One representative told
25 the employee that (b) was taking a picture of the dog that was on the employee's lap; another
26 SEIU representative told an employee that the photograph was for the representative's boss to
27 prove that the representative had spoken to the employee. These bargaining unit employees'
28 photographs were then published in a manner that suggested that they were in favor of voting for

1 SEIU, misleading the bargaining unit at large.

2 3. The NLRB Agents failed to conduct the election in a manner that ensured
3 that it was a free and trustworthy election. The Board Agents' conduct preceding and during the
4 election created such chaos that it directly impugned the election standards the NLRB seeks to
5 maintain, and is a sufficient basis for setting aside this election. The "Pre-Election Conference"
6 perfectly exemplifies the haphazard and chaotic procedures and decisions from the Board Agents.
7 Despite having all parties on a scheduled video conference the day before the start of the election
8 on January 31, 2023, the Board Agents refused to address serious outstanding issues about the
9 voter list at that time. Namely, the Hospital sought to remove a list of (b) (6), (b) (7)(C)
10 (b) (6), (b) (7)(C) employees (b) (6), (b) (7)(C) from Sharp from the voter list and add (b) (6), (b) (7)(C) employee
11 names to the voter list. Counsel for the Hospital raised these issues prior to the Pre-Election
12 Conference, but the Board Agent dismissed the discussion, stating that they would be addressed
13 the day of the election prior to the opening of the polls at 6:00 a.m. Instead, the Board Agent lead
14 off the January 31, 2023 Pre-Election Conference by inquiring about where he could park for the
15 election and whether he would receive a reserved space. The Board Agents deferred all questions
16 about the above voting list issues to the following day, stating that these subjects would be decided
17 at the Pre-Election Conference on the day of the election. The Board Agents suggested that the
18 February 1, 2023 Pre-Election Conference covering voter list certification, observer preparation,
19 and a myriad of other issues could be handled in 15-minutes, and suggested the conference begin
20 15-minutes before the polls opened at 6:00 a.m. Counsel for the Hospital was forced to request
21 that the Conference be extended to 30-minutes. In the Conference that they proposed last a mere
22 15-minutes, the Board Agents apparently planned to set up the entire voting room, prepare
23 observers for the election, settle all disputes about the over 1400 person voter list, establish a no-
24 electioneering zone including designating ingress and egress areas for SEIU and Hospital
25 representatives, and discuss all other issues the parties had about the election – a wholly unrealistic
26 position.

27 At the February 1 Pre-Election Conference, held just minutes before the polls opened for
28 the first voting window, the three Board Agents present failed to adequately address the voter list

1 and the other subjects typically discussed at the Pre-Election Conference. Instead, the Board
2 Agents (for the first time) indicated that they would refuse to allow observers to request
3 identification from voters in violation of clear Board rules and contrary to the objection of the
4 Hospital, attempted to rush the parties through the review and certification of an over 1400 person
5 voter list, and then walked away and began preparing observers for voting while representatives
6 for SEIU and the Hospital were attempting to resolve key issues about the voter list. The Board
7 Agents then rushed representatives from both parties out of the voting room because, predictably,
8 they had run out of time and the polls were set to open. This resulted in the parties being unable to
9 discover and address the alterations that the Board Agents made to the voting list prior to the start
10 of the election. Indeed, the Hospital would only later discover that the Board Agents' negligent
11 alteration of the voting list resulted in many hyphenated employee names being cut off. As such,
12 the voter list appeared to not be in alphabetical order and certain names did not appear properly on
13 the voter list. The parties are aware of at least one situation where an employee was improperly
14 checked off the list, likely because of this deficiency in the voter list. The Board Agents also did
15 not have enough time to designate a no-electioneering zone or establish designated ingress and
16 egress areas for SEIU and Hospital representatives to enter and leave the polls. This failure
17 created the possibility for surveillance of the voting line, something that the SEIU representative
18 immediately took advantage of as [REDACTED] left the Pre-Election Conference, walking directly passed all
19 of the employees who were lined up to vote. This failure was never remedied, and the election
20 proceeded without a no-electioneering zone for three (3) days.

21 Another item on the laundry-list of objectionable actions by the Board Agents during the
22 election was their reorganization of the voting room on the day of the election that obstructed both
23 sets of election observers' view of the ballot box. This is compounded by the issue that the Board
24 Agents were then repeatedly seen on their phones during the voting windows by election
25 observers. This means that there were times where neither an observer nor a Board Agent were
26 watching the ballot box. This egregious conduct clearly impugns the election standards set forth
27 by the NLRB.

28 4. This election is presumptively invalid because, at the direction of the Board

1 Agents, the vast majority of voters were not able to be positively identified by observers prior to
2 casting their ballots. On the morning of the election, just moments before the polls were set to
3 open, the Board Agents told the election observers that the sole method of identifying the over
4 1400 employees set to vote would be to ask the voters to state their name, and require no
5 documentation to prove their identity. The Hospital's counsel objected vehemently, but was
6 overruled and ignored. The fact that election observers were forced to allow employees to vote
7 without having any validation of their identity beyond simply stating their name is appalling and
8 strikes at the very heart of the integrity of this election. *See Avondale Industries v. NLRB*, 180
9 F.3d 633 (5th Cir. 1999) ("**verbal self-identification is appropriate when it is likely that the**
10 **observers are personally acquainted with the voters. It is wholly inadequate, however, as the**
11 **sole guide to identification, where a very large bargaining unit is contemplated, and the**
12 **voter lists contain virtually the only information that will assure the identity of the voters.**
13 The procedures used in *Newport News* and *Monfort, Inc.* **confirm this common sense notion and**
14 **equally condemn the unthinking adoption of 'standard practice' [of verbal self-**
15 **identification] for a multi-thousand employer").** *Id.* at 637. (emphases added).

16 This is a large election with over 1400 employees eligible to vote. This is also a complex
17 election, as the bargaining unit consisted of roughly one hundred (100) different job categories
18 spread out over at least five (5) building locations. Courts routinely hold that when election
19 observers are unable to be personally acquainted with the voters, the lack of a voter identification
20 requirement is "fatally flawed" and, in and of itself, is sufficient to overturn an election. *See Id.*
21 Further, the Hospital has presented at least one case of mistaken voter identity and/or voter fraud.
22 This alone raises a reasonable doubt as to the election's validity and warrants a second election.

23 The Board Agents also failed to raise the issue of identification with the parties; instead,
24 the Board Agents dismissed any discussion about the issue of identification and allowed the
25 election to proceed with no procedural safeguards for ensuring that the people casting ballots in
26 the election were actually who they claimed to be. In an election with over 1400 individuals from
27 multiple work locations conducted with masking protocols, the election observers cannot be
28 expected to recognize voters visually. As one of the Hospital's observers put it "I never saw a

1 familiar pair of eyes [during the whole voting window]."

2 The failure of the Board Agents to even raise the issue of voter identification with the
3 parties directly violates the NLRB Casehandling Manual. Per Section 11312.3 of the
4 Casehandling Manual, in large or complex elections, the Board Agent should explore with the
5 parties in advance of the election the identifying information to be utilized by voters as they
6 approach the checking table. This did not occur. If agreement is not reached between/among the
7 parties, the Regional Director should consider whether to require identifying information in
8 addition to self-identification by voters. *Monfort, Inc.*, 318 NLRB 209 (1995); *Newport News*
9 *Shipbuilding & Dry Dock Co.*, 239 NLRB 82 (1978).

10 The Board Agents' blind hope that voters would correctly and honestly identify themselves
11 by stating their name and not requiring verifiable information is grounds to overturn the election.
12 *See Avondale* at 640 ("[t]he NLRB's reliance on mere hope, unsupported by objectively
13 verifiable voter information, raises a reasonable doubt as to the fairness and validity of the
14 election"). (emphases added).

15 5. During the Critical Period, the Petitioner impermissibly surveilled
16 bargaining unit employees by repeatedly returning to their houses, despite being asked not to. The
17 Petitioner also followed bargaining unit employees in cars to the Hospital during the election.
18 This created an environment of fear for all employees in the bargaining unit as word of these
19 tactics spread.

20 6. During the Critical Period, the Petitioner, through its agents, solicited
21 bargaining unit employees during working time, in working areas and in patient-care areas, and in
22 other non-public areas in blatant and intentional violation of well-established Board law as well as
23 clearly defined Hospital policy. Further, pro-SEIU employees refused to stop their solicitation
24 despite repeated requests to do so. Indeed, at least one pro-SEIU employee physically touched a
25 bargaining unit employee while demanding to know who (b) (6), (b) (7)(C) voted for in the election. This
26 created an atmosphere of coercion throughout the Hospital leading up to and during the election.

27 7. On February 1, 2023, Petitioner's representative left the Pre-Election
28 Conference and walked past voters who were lined up in preparation for the polls being opened for

1 the 6:00 a.m. voting session. This constitutes impermissible surveillance of employees at the most
2 critical time – right as they were about to cast their votes. *See Milchem, Inc.*, 170 NLRB 362
3 (1968) ("[t]he final minutes before an employee casts his vote should be his own, as free from
4 interference as possible."); *In Re Nathan Katz Realty, LLC*, 29-CA-23280, 2002 WL 1883790
5 (Aug. 12, 2002) ("The question to be determined is whether the evidence established that the
6 Union representatives engaged in unlawful surveillance by its conduct of observing bargaining
7 unit employees leaving or entering the polling place. In that regard, the issue is whether that
8 conduct is deemed to have a reasonable tendency to coerce employees.").

9 8. The Region's erroneous instructions to the Hospital about the inclusion of
10 multiple languages on the election ballots and its subsequent eleventh-hour decision to only
11 provide the ballots in English fundamentally affected the election. The Hospital and its counsel
12 relied on the Board Agent's representations that there would be multiple languages on the ballot
13 itself and prepared election observers and bargaining unit employees with that expectation. The
14 Board Agent then reversed this instruction mere days before the election began.

15 9. The Region's post-election conduct prejudiced the Hospital because it was
16 not allowed the statutorily guaranteed time to file its Objections and its Offer of Proof. Section
17 102.69(a) of the Board's Rules and Regulations states that Objections and the Offer of Proof must
18 be filed "within 5 business days after the tally of ballots has been prepared". The Tally of Ballots
19 was emailed to counsel for the Hospital on Monday, February 6, 2023, despite the election and
20 vote tally taking place on Friday, February 3, 2023. Per the Board's Rules and Regulations, the
21 tally of ballots should have been "immediately made available to the parties". Since the tally of
22 ballots was not made available to the parties until Monday, February 6, 2023, the five (5) business
23 day deadline should have begun on that date. Indeed the **NLRB's own website stated that the**
24 **Objections to the election were due on Monday, February 13, 2023.** The Hospital and its
25 counsel also received numerous additional complaints from employees regarding SEIU's conduct
26 during the election and it was unable to conduct sufficient fact-finding investigations into these
27 allegations in the short window before its Offer of Proof was due. When the Hospital asked for an
28 extension to the February 13, 2023 deadline provided by the NLRB citing these valid reasons and

1 showing good cause, the Assistant Regional Director denied the request and stated that the
2 Objections and Offer of Proof were actually due three (3) days earlier – on Friday, February 10,
3 2023. The Region then refused to give a reasoning for this change. In short, the Hospital asked
4 for an extension and was ultimately given less time to file than the NLRB website and the NLRB's
5 own Rules and Regulations provide for. This substantially prejudiced the Hospital in its
6 preparation of these objections. In light of this, the Hospital reserves the right to present
7 additional witnesses and evidence.

8 **II. CONCLUSION**

9 Together or separately, these objections identify conduct which could have affected the
10 results of the election. *See Cambridge Tool & Mfg. Co.*, 316 NLRB 716 (1995) (ordering that
11 election can be set aside where the objectionable conduct "could well have affected the outcome of
12 the election"). The number of "Yes" votes exceeded the number of "No" votes and challenged
13 ballots by 143, which represents just 11% of total votes cast and 9.8% of eligible voters – many of
14 whom may well have been deterred from voting or had their vote swayed by the Union's
15 objectionable conduct. As a result, eligible voters have been interfered with, coerced, and
16 restrained in the exercise of their Section 7 rights, and the "laboratory conditions" required for a
17 free and fair election were not preserved.

18 The Petitioner's conduct was widely known throughout the Hospital, and among unit
19 employees voting in this election. Accordingly, the Petitioner's conduct destroyed the laboratory
20 conditions desired and required by the Board, thereby resulting in undue influence upon unit
21 employees. By the acts set forth above, and by other similar acts and conduct, Petitioner so
22 contaminated the atmosphere under which the election was held so as to render a free and non-
23 coercive election impossible.

24 Further, the Board Agents conducting the election engaged in such egregious conduct that
25 the results of the election cannot help but be questioned. The failure to follow Board procedures
26 and the outright refusal to address issues with the parties prior to the polls opening is appalling.
27 Indeed, the Board Agents modified the most important document in the entire election, the voter
28 list, without allowing the parties adequate time to review the list or correct (or even notice) the

1 mistakes.

2 WHEREFORE, the Regional Director should set aside the results of the election and direct
3 that a new election be held in which the eligible voters can decide, in an atmosphere free from
4 improper conduct, whether they wish to be represented for purposes of collective bargaining by
5 the Petitioner.

6 DATED: February 10, 2023

JEFFER MANGELS BUTLER & MITCHELL LLP
BARBRA A. ARNOLD

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8
9 By:



BARBRA A. ARNOLD
Attorneys for SHARP GROSSMONT HOSPITAL

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067-4308.

On February 10, 2023, I served true copies of the following document(s) described as **EMPLOYER SHARP GROSSMONT HOSPITAL'S OBJECTIONS TO THE CONDUCT OF THE ELECTION AND CONDUCT AFFECTING THE RESULTS OF THE ELECTION** as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address (b) (6), (b) (7)(C)@jmbm.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 10, 2023, at Los Angeles, California.

/s/ (b) (6), (b) (7)(C)
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